

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PHILLIP A. BYRD,

Petitioner,

v.

CHRIS BUESGEN,

Respondent.

ORDER

23-cv-639-jdp

Petitioner Phillip Byrd, proceeding without counsel, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his 2015 conviction for second-degree intentional homicide. I dismissed his petition as untimely. Dkt. 26. Byrd has filed a notice of appeal, Dkt. 28, and he moves for an order directing that the entire appellate filing fee be paid from his prison release account, Dkt. 30.

I will deny Byrd's motion regarding his filing fee. With the exception of initial partial payments of filing fees, this court does not have the authority to tell state officials whether a prisoner should be able to withdraw money from a release account. *See Carter v. Bennett*, 399 F. Supp. 2d 936, 936–37 (W.D. Wis. 2005).

If Byrd alternately seeks to proceed with his appeal without prepaying the full fee, also known as “in forma pauperis” status, I would deny that request as well. Under 28 U.S.C. § 1915(a)(3), a party is ineligible for in forma pauperis status on appeal if the appeal is “not taken in good faith.” *See also* Fed. R. App. P. 24(a)(3). An appeal is taken in good faith if “a reasonable person could suppose that the appeal has some merit.” *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000). This appeal is not in good faith: no reasonable person could suppose that I was incorrect in dismissing Byrd's petition as untimely.

That means that Byrd cannot proceed with this appeal without prepaying the \$605 filing fee unless the court of appeals gives him permission to do so. Under Federal Rule of Appellate Procedure 24, Byrd has 30 days from the date of this order to ask the court of appeals to review this order. Byrd must include with his motion a copy of his affidavit of indigency and a copy of this order.

ORDER

IT IS ORDERED that petitioner Phillip Byrd's motion regarding the appellate filing fee, Dkt. 30, is DENIED.

Entered April 29, 2025.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge